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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

22 PATRICK CALHOUN, *et al.*, on behalf of
23 themselves and all others similarly situated,
24 Plaintiffs,

25 v.

26 GOOGLE LLC,
27 Defendant.

28 Case No. 5:20-cv-5146-LHK-SVK

1 **JOINT SUBMISSION RE:
2 NOMINATIONS FOR A SPECIAL MASTER
3 AND PROPOSED ORDERS**

4 Referral: Hon. Susan van Keulen, USMJ

5 Case No. 5:20-cv-3664-LHK-SVK

6 CHASOM BROWN, *et al.*, on behalf of themselves
7 and all others similarly situated,
8 Plaintiffs,

9 v.

10 GOOGLE LLC,
11 Defendant.

1 July 2, 2021

2 **Submitted via ECF**

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: **Joint Submission re: Nominations for a Special Master and Proposed Orders**

9 *Calhoun v. Google LLC*, Case No. 5:20-cv-5146, Dkt. No. 220-1, Dispute 1.3

10 *Brown v. Google LLC*, Case No. 5:20-cv-3664, Dkt No. 191-1, Disputes P3 & P6

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's June 21, 2021 and June 29, 2021 orders in *Calhoun, et al. v.*
13 *Google LLC* (Dkt. Nos. 223 and 230) and *Brown, et al. v. Google LLC* (Dkt. Nos. 196 and 206), the
14 *Calhoun* Plaintiffs, the *Brown* Plaintiffs, and Defendant Google LLC ("Google") jointly submit their
15 nominations for Special Technology Master and competing Rule 53 proposed orders. Also attached
16 to this submission are the following exhibits:

- 17
- 18 • Exhibit A-1 is the CV of Plaintiffs' proposed Special Technology Master, Professor
19 Frank Shipman;
 - 20 • Exhibit A-2 is the Affidavit of Professor Frank Shipman Pursuant to 28 U.S.C. § 455;
 - 21 • Exhibit A-3 is Plaintiffs' proposed Rule 53 order;
 - 22 • Exhibit B-1 is the CV for Google's first nomination for technical special master,
23 Douglas A. Brush;
 - 24 • Exhibit B-2 is the Affidavit of Douglas A. Brush Pursuant to 28 U.S.C. § 455;
 - 25 • Exhibit B-3 is the CV for Google's second nomination for technical special master,
26 Steven M. Bauer;
 - 27 • Exhibit B-4 is the Affidavit of Steven M. Bauer Pursuant to 28 U.S.C. § 455;
 - 28 • Exhibit B-5 is Google's Rule 53 proposed order;

29 The Parties met and conferred concerning their nominations and proposed orders. This
30 submission includes separate position statements from the *Calhoun* and *Brown* Plaintiffs and Google
31 regarding their candidate nominations and proposed orders.

1 **JOINT STATEMENT OF THE CALHOUN AND BROWN PLAINTIFFS:**

2 **I. Plaintiffs' Nomination**

3 The *Calhoun* Plaintiffs and *Brown* Plaintiffs together nominate Professor Frank Shipman of
 4 Texas A&M University, shipman@cse.tamu.edu, (979) 862-3216, for appointment as Special
 5 Technology Master. Plaintiffs respectfully submit that Professor Shipman is the most logical choice
 for the role outlined by the Court.

6 *First*, Professor Shipman possesses technical expertise uniquely suited to assist the Court in
 7 the two areas the Court has identified: (1) what information Defendant has collected from Plaintiffs'
 8 browsers and associated with their profiles; and (2) what information Defendant has regarding
 identification of putative class members.

9 Professor Shipman's computer science background makes him distinctively qualified to
 10 understand the technology issues in this case. *See Exhibit A-1* (Professor Shipman CV). He has
 11 earned a B.S. in Electrical Engineering from Rice University and an M.S. and Ph.D. in Computer
 12 Science from the University of Colorado at Boulder. Since 1987, he has been pursuing research in
 13 the areas of hypermedia, computer-supported cooperative work, multimedia, computers and
 14 education, and intelligent user interfaces. For over two decades, he has been a professor at Texas
 15 A&M University, and he is currently the Associate Department Head of the Department of
 16 Computer Science. Professor Shipman helped found the field of spatial hypertext and helped design
 17 and develop a number of collaborative hypermedia systems. An example of hypermedia is the World
 Wide Web, because in that context hypermedia is delivered via electronic pages from systems such
 as browsers through which users click text links. In other words, hypermedia can be thought of as a
 name for everything that we interact with on the internet. Professor Shipman has been awarded 21
 patents. His unmatched knowledge of computer technology can intelligently assist the Court in
 crafting an efficient preservation and production plan and resolve any other technology-based
 discovery dispute fair to both sides.

18 *Second*, Professor Shipman has served as a court-appointed Special Technology Master in
 19 numerous cases. *See, e.g., Allure Energy, Inc. v. Nest Labs, Inc.*, Case No. 9-13-CV-102 (E.D. Tex.);
 20 *Pers. Audio, LLC v. Apple, Inc.*, Case No. 9:09CV111 (E.D. Tex.); *Affinity Labs of Texas, LLC v.*
Alpine Elecs. Of Am., Inc., Case No. 08-cv-171 (E.D. Tex.). In these matters, Professor Shipman
 21 assisted the courts in better understanding the technical aspects of the parties' arguments. His
 specialty is in translating complex technical issues into workable legal concepts. This experience
 renders Professor Shipman highly qualified to serve as the Special Technology Master in the *Brown*
 22 and *Calhoun* matters. Furthermore, Professor Shipman has no relationship to the parties and thereby
 satisfies Rule 53(a)(2)'s neutrality requirement. *See Exhibit A-2* (Professor Shipman Affidavit).¹

23
 24
 25 ¹ Plaintiffs disclosed Professor Shipman to Google in advance of this submission, and
 26 Plaintiffs' first nomination has now withdrawn from consideration. Plaintiffs have been diligently
 27 searching for a conflict-free special master with the qualities of Plaintiffs' prior candidate, whom
 Quinn Emanuel opposed on new and startling grounds within hours of a midnight filing. Google
 now asks the Court to draw an improper and incorrect inference about the reasons for the
 candidate's withdrawal and criticizes Plaintiffs for not identifying a new candidate sooner. If the
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1 Plaintiffs have seriously considered and vetted Google's proposed neutrals but have not
 2 reached consensus with Google on their appointment. Plaintiffs spoke with both of Google's
 3 nominees on June 28, 2021, and continue to recommend Professor Frank Shipman. These cases
 4 involve sophisticated computer technology, and the appointed Special Master must have a computer
 5 science background in order to properly assist the Court. Plaintiffs submit that Professor Shipman's
 6 combined technical knowledge and experience as a court-appointed Technology Advisor is
 7 unmatched, and his technical ability is more directly focused on the issues in this case. Accordingly,
 8 Plaintiffs request the Court appoint Professor Frank Shipman as Special Technology Master.

9 **II. Plaintiffs' Proposed Rule 53 Order**

10 Plaintiffs respectfully submit the attached proposed order (Ex. A-8) regarding the scope and
 11 duties of the Special Master, while deferring to the Court and Appointee's experience in this regard.
 12 The Parties previously exchanged draft proposals and met and conferred on June 25, 2021. Plaintiffs
 13 respectfully submit this position statement to briefly summarize their approach and the key points
 14 in dispute with regard to the proposed orders:

15 **Authority for and Scope of the Appointment (Ex. A-3, Section 1):** The Parties agree that
 16 the appointed Special Master will first address current disputes identified in the Court's order (*see*
 17 *Brown* Dkt. 196 & *Calhoun* Dkt. 223) as described in Paragraphs 1(a) and 1(b) of Plaintiffs'
 18 proposed order. They also agree that the Special Master may be appointed to assist with additional
 19 disputes. Plaintiffs propose (and Google opposes) that the Special Master have authority to monitor
 20 compliance with the Court's orders to ensure the efficient, speedy progression of discovery in this
 21 litigation. Plaintiffs further propose (and Google opposes) that the Court authorize the Special
 22 Master to conduct weekly or bi-weekly check-ins to discuss pending discovery disputes and to do
 23 that *before* the Parties reach impasse, not in lieu of meet and confer sessions but to facilitate
 24 constructive negotiation. Plaintiffs believe regular check-ins will reduce the burden on the Court.
 25 Regular check-ins with the Special Master could also identify additional disputes that would benefit
 26 from his technical expertise.

27 **Special Master's Duties and Authority (Ex. A-3, Section 2):** Plaintiffs propose the Special
 28 Master have discretion to determine the appropriate procedures for resolution of assigned disputes
 29 and to issue informal reports, orders, or recommendations. The Special Master appointed in these
 30 cases should have extensive experience in that role and may have preferences for how disputes are
 31 discussed, briefed, and resolved. Plaintiffs suggest that the Special Master be authorized to use his
 32 judgment depending on the particular dispute.

33 **Communications with the Parties and Court (Ex. A-3, Section 3):** The Parties agree that
 34 the appointed Special Master may communicate *ex parte* with the Court. Consistent with other
 35 Rule 53 orders, Plaintiffs propose (and Google opposes) that the Special Master be able to
 36 communicate *ex parte* with the Parties, in his discretion, to facilitate frank discussions.

37 **Review of Special Master's Reports, Orders or Recommendations (Ex. A-3, Section 5):**
 38 In addition to allowing the Special Master discretion to determine the procedures for resolving

39 Court wishes to grant Quinn Emanuel more time to evaluate this candidate and an opportunity to
 40 be heard under Rule 53(b)(1), Plaintiffs will not oppose.

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1 disputes, Plaintiffs' proposed order contains provisions aimed at increasing efficiency and moving
 2 this litigation forward. Plaintiffs suggest a reduction in time limits to object to the Special Master's
 3 order, report, or recommendation and a presumption that, absent timely objections, the Special
 4 Master's order, report, or recommendation is approved. These procedures will streamline disputes
 5 and avoid additional briefing before the Court. In addition, Plaintiffs suggest a presumption that the
 6 Special Master's order, report, or recommendation be filed publicly on the docket, and shall only be
 7 sealed pursuant to the Protective Orders in the *Calhoun* and *Brown* matters. Plaintiffs also propose
 8 (and Google opposes) that findings of fact should be reviewed by the Court under a clear error
 9 standard. Imposing a *de novo* standard of review would undermine the benefits of the Special
 10 Master's technical expertise and increase the briefing before the Court by opening the door to
 11 additional layers of appeal.

12 **Cooperation (Ex. A-3, Section 6):** Plaintiffs' proposed order includes a provision on
 13 cooperation with the Special Master to streamline the resolution of disputes. Google misstates the
 14 purpose of Plaintiffs' proposal by suggesting that the Special Master would be provided *carte*
 15 *blanche* access to its employees, files, databases, facilities, and premises. This parade of horribles
 16 is unfounded, and Plaintiffs' proposal is consistent with other Rule 53 orders. Plaintiffs' interest is
 17 in the efficient, speedy resolution of discovery disputes, and believe a provision ensuring the Special
 18 Master has access to materials needed to resolve disputes will facilitate that goal.

19 **Compensation (Ex. A-3, Section 7):** Plaintiffs respectfully request that Google bear 50%
 20 of costs and Plaintiffs bear 50% of costs (25% for the *Calhoun* Plaintiffs and 25% for the *Brown*
 21 Plaintiffs). Plaintiffs object to Google's proposal that the *Calhoun* Plaintiffs, *Brown* Plaintiffs, and
 22 Google each pay a third of the Special Master's fees. Google is already benefiting by coordinating
 23 the costs of a Special Master in two cases and remains a defendant in both. There is no reason to
 24 shift costs to Plaintiffs here beyond the usual arrangement.

25 In light of these considerations, Plaintiffs respectfully request the Court adopt their proposed
 26 Rule 53 Order. *See Exhibit A-3.*

27 STATEMENT OF DEFENDANT GOOGLE LLC:

28 1. Both of Google's Special Master Nominees Are Well-Qualified To Assist The Court With Discovery Disputes Of A Technical Nature

29 After an extensive search, Google has identified two, neutral candidates whom Google now
 30 nominates to the Court for the position of technical special master: Douglas A. Brush and Steven
 31 M. Bauer.

32 **Douglas A. Brush:** Douglas Brush, GCIH, GCFA, GCFE,² EnCE, is a "globally recognized
 33 expert in cybersecurity data privacy, incident response, digital forensics, and information
 34 governance," and "has conducted hundreds of investigations involving hacking, data breaches, trade
 35 secret theft, employee malfeasance, and other legal and compliance issues." Ex. B-1. Mr. Brush was
 36 appointed by Judge Breyer as the special master in *In re: Google Inc. Street View Electronic*

27 ² Mr. Brush has received Global Information Assurance Certifications as a forensic analyst
 28 (GCFA), incident handler (GCIH), and forensic examiner (GCFE).

1 *Commc'ns Litigation*, No. 3:10-md-02184 (N.D. Cal.), and was appointed as a neutral expert in *VCS*
 2 *Group, LLC v. Carlos Molina*, No. 3:10-cv-01031 (D. Conn. 2010) and *Media Revo Corp. v. Adam*
 3 *Rouff*, No. 032379 (N.Y. S. Ct. 2011).

4 In the above matters, Mr. Brush performed exactly the role that the Court is seeking to fill
 5 here: he assisted the court in better understanding the technical aspects of the parties' arguments.
 6 Mr. Brush's expertise in technical data issues, his credentials, and his extensive experience in
 7 litigation (including his prior experience as special master in the Northern District of California),
 8 render him uniquely qualified to serve as a technical special master in these two cases. Mr. Brush
 9 has confirmed his interest and availability in serving as a technical special master in these two cases.
 10 We attach Mr. Brush's affidavit as Exhibit B-2.

11 **Steven M. Bauer:** Steven M. Bauer holds a B.S. in Electrical Engineering from MIT, a M.S.
 12 in Electrical Engineering and Computer Science from MIT, and a J.D. from Boston University
 13 School of Law. *See Ex. B-3.* He served as a law clerk and technical advisor to Judge Philip Nichols
 14 at the Federal Circuit. Mr. Bauer has 30 years of experience as an arbitrator, first on the Complex
 15 Cases panel for AAA, and currently with JAMS, where he specializes in technology cases, presiding
 16 over "international and domestic cases involving technology and life sciences disputes." *Id.* Prior to
 17 joining JAMS in 2020, Mr. Bauer was the co-chair of Proskauer's national patent and intellectual
 18 property group, and a member of its Executive Committee, with experience litigating a variety of
 19 technologies, including data encryption, cable and internet communications protocols, digital signal
 20 processing in parallel computer architecture, micromechanical electronic microphones, VoIP
 21 switching technologies, and video-on-demand servers. Mr. Bauer currently teaches the introduction
 22 to IP Law class at MIT, and patent litigation at Boston University School of Law (where he also
 23 taught Computer Law).

24 Mr. Bauer's experience and credentials make him an excellent candidate to serve as a
 25 technical special master in *Brown* and *Calhoun*. Mr. Bauer is well-positioned to assist the Court
 26 with the two current disputes, and any future technical issues with which the Court may need
 27 technical assistance. Mr. Bauer has confirmed his interest in serving as a technical special master
 28 and, with exception of one week in mid-July (when he has an arbitration hearing in St. Louis), Mr.
 29 Bauer is available to assist the Court in the current disputes and any other disputes the Court deems
 30 necessary. Should the Court desire additional information about Mr. Bauer and his interaction with
 31 federal judges who know him, it may reach out to: Chief Judge Rodney Gilstrap (E.D. Tex.), Judge
 32 William Young (D. Mass), Judge George O'Toole (D. Mass), or Magistrate Judge Marianne Bowler
 33 (D. Mass.). We attach Mr. Bauer's affidavit as Exhibit B-4.

34 **2. Google Requests An Opportunity To Be Heard On Plaintiffs' Candidate Under Rule**
 35 **53(b)(1)**

36 Despite the Court's June 8, 2021 order (*Brown*, Dkt. 191-1) requesting the parties' views on
 37 the appointment of a technical special master and its June 21, 2021 order (*id.*, Dkt. 196) requesting
 38 no more than two nominations from each side, Plaintiffs collectively picked only one candidate.
 39 Google raised concerns about Plaintiffs' sole candidate's past bias, supporting its concerns with
 40 citations to the candidate's scholarship and a third-party affidavit. Less than three hours before the
 41 filing deadline, that candidate withdrew ostensibly due to the concerns Google raised. Plaintiffs have
 42 now proposed Dr. Shipman as their sole candidate. Despite having over a week to identify and
 43 withdraw candidates, Plaintiffs have failed to do so.

1 disclose two candidates, Plaintiffs disclosed Dr. Shipman just yesterday. Google is still conducting
 2 its diligence on Dr. Shipman. And, particularly given its concerns about Plaintiff's prior candidate,
 Google reserves its right to have an opportunity to be heard if the Court is inclined to select him.

3 **3. Google's Rule 53 Proposed Order Is Tailored To Conform To The Letter And Spirit
 4 Of The Court's Request For A Technical Special Master**

5 The Court stated that the technical special master will assist the Court with two current
 6 disputes, "(1) what information Defendant has regarding Plaintiffs; and (2) what information
 Defendant has regarding identification of putative class members," as well as "future discovery
 7 dispute of a technical nature, as the Court deems necessary." *Brown*, Dkt. 196 at 1. Further, "[i]t is
 8 not the Court's intention that this will be a general referral for all discovery matters." *Id.* The Court
 also provided additional guidance as to the contours of the technical special master's authority:
 9 "It is presently the Court's intention that the Special Master may confer directly with the Court, with
 his/her ultimate decisions reflected in reports and recommendations to the Court, allowing a
 shortened period for Parties' objections and a timely decision by the Court." *Id.* at 1-2.

10
 11 Google drafted its Rule 53 proposed order to be consistent with this guidance from the Court.
See Ex. B-5. In contrast, Plaintiffs' proposed order disregards the Court's instructions regarding the
 12 scope of duties and authorities for the technical special master. Plaintiffs effectively envision the
 13 special master supplanting the Court's authority and responsibility to manage discovery disputes
 (to, no doubt, entertain Plaintiffs' endless list of discovery demands) despite the Court's clear
 14 instruction to the contrary. There is no need for the vast majority of the additional duties and
 authorities that Plaintiffs are proposing to give the technical special master.

15 **Scope of Duties:** The scope of duties provided to the technical special master in Google's
 16 proposed order tracks the language in the Court's order.

17 By contrast, Plaintiffs' proposed order expansively purports to "anticipate [the] needs of this
 18 Court." Ex. A-3, ¶ 1.

19 *First*, Plaintiffs shoehorn into paragraphs 1(a) and 1(b) a wishlist of issues for which the
 20 Court has not stated it needs assistance, including "profiles, identifiers, authenticated and
 unauthenticated data linked to Plaintiffs, their devices, or any other identifiers associated with
 21 Plaintiffs and their devices, metadata, and embedded data and derived data." *Id.*, ¶¶ 1(a), (b). There
 is no basis to include such specific items in the order; the Court might decide that none or only a
 22 subset of those issues need to be addressed by the technical special master.

23 *Second*, in paragraph 1(e), Plaintiffs also seek to empower the technical special master to
 24 "[d]irect, supervise, monitor, and report upon implementation and compliance with the Court's
 Orders." *Id.*, ¶ 1(e). Providing the Special Master with unprecedented access and powers to look
 over Google's shoulder—even beyond powers granted to a federal district or magistrate judge,
 would be improper. Rather than increasing efficiency, this provision will very likely generate
 25 additional, unnecessary disputes, expense, and delay.

27 *Third*, Plaintiffs' proposal in paragraph 1(h) for weekly or bi-weekly check-ins is
 28 unnecessary, impractical, and burdensome. *Id.*, ¶ 1(h); *see Brown*, Dkt. 195 at 8, 9. These would
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1 allow Plaintiffs to circumvent the Court’s direction that the technical special master will not be a
 2 referee on general discovery disputes. *Brown*, Dkt. 196 at 1. It would also incentivize Plaintiffs to
 3 forgo the meet and confer process in favor of taking their demands directly to the technical special
 4 master.

5 **Scope of Authority:** Google has enumerated in its Rule 53 proposed order the appropriate
 6 scope of authority to the technical special master in accordance with the Court’s Order. For example,
 7 Google’s Rule 53 proposed order allows “the Special Master [to] confer directly with the Court”
 8 (*Brown*, Dkt. 196 at 1), by allowing for *ex parte* communications between the technical special
 9 master and the Court. Ex. B-5, ¶ 14. Further, based on the Court’s guidance that the technical special
 10 master’s “ultimate decisions [should be] reflected in reports and recommendations to the Court”
 11 (*Brown*, Dkt. 196 at 1), Google’s proposed order allows the technical special master to “report to
 12 the Court his recommended resolution of the Parties’ Disputes” in the form of reports and
 13 recommendations. Ex. B-5, ¶ 8.

14 Google’s Rule 53 proposed order includes the following additional affirmative duties to
 15 ensure that the special master discharges his duties efficiently and fairly for the parties and the Court.

16 *First*, the technical special master must treat any confidential information consistent with
 17 the protections in the Protective Order of both cases, and Google has proposed relevant provisions
 18 in the Appointment Order. Ex. B-5, ¶¶ 10, 11.

19 *Second*, any submission to or guidance from the technical special master should be filed on
 20 the case docket. *Id.*, ¶ 11. The parties and the Court will all benefit from a full and complete record
 21 of the parties’ submission and the technical special master’s advice on how to resolve the discovery
 22 disputes.

23 *Third*, it is important for the technical special master to maintain and preserve documents
 24 and evidence that has been submitted to him by the parties (*id.*, ¶¶ 15, 4), which will mitigate any
 25 disputes relating to what was submitted to the technical special master. Further, *ex parte*
 26 communications between the technical special master and parties or counsel should not be allowed.
Id., ¶ 14. Additionally, rather than putting the onus on the parties to “provide for any record of
 27 proceedings with the Special Master,” ***subject to approval by the technical special master*** (Ex. A-
 3, ¶ 4), Google proposes that a court reporter attend the hearings held by the technical special master.
 The lack of a clear and complete record maintained by a neutral party may result in additional,
 unnecessary disputes between the parties.

28 *Fourth*, any finding of fact should be reviewed by the Court under a *de novo* standard (Ex.
 B-5, ¶ 13, rather than clear error. Ex. A-3, ¶ 5. The Court should not be constrained by the findings
 of fact of a person who is not afforded the powers granted under Article II or III, especially if the
 findings of fact exceed the scope of duties or authority contemplated by the Court’s instructions and
 order.

29 Plaintiffs’ order, by contrast, would give the technical special master an improperly broad
 30 scope of authority that goes far beyond what is required to assist the Court with discovery disputes
 31 of a technical nature.

1 *First*, paragraph 6 of Plaintiffs' proposed order is untenable. There, the Plaintiffs seek to
 2 mandate that Google's employees, among others, "provide full cooperation to the Special Master"
 3 and that Google "shall make readily available to the Special Master any and all individuals,
 4 information, documents, materials, programs, files, databases, services, facilities, and premises
 5 under their control that the Special Master requires to perform his duties." Ex. A-3, ¶ 6. The technical
 6 special master cannot be provided *carte blanche* access to a party's employees, files, databases,
 7 facilities, and premises, among other things. If the technical special master needs more information,
 8 he can order more briefing or a hearing as contemplated in Google's Rule 53 proposed order. Ex.
 9 B-5, ¶ 5. Such access as contemplated by Plaintiffs combined with *ex parte* communications with
 10 Plaintiffs and the Court has the potential to transform the technical special master into the plaintiffs'
 11 own technical expert with law clerk-like access to the Court—a scope of authority no one individual
 in this litigation has ever had.

12 *Second*, Plaintiffs' proposal that the Court may request the technical special master to "assist
 13 the Court with legal analysis of the Parties submissions" is unnecessary. Ex. A-3, ¶ 3. The Court did
 14 not request a law clerk, only assistance from a neutral party with technical expertise on technical
 15 issues related to the two current disputes identified in the Court's Order. The Court has consistently
 demonstrated that it is more than capable of applying law to facts in these cases.

16 *Third*, the technical special master should not be allowed to engage in any *ex parte*
 17 communications with the parties or counsel. *Id.*, ¶ 3. As an initial matter, there is no reason
 18 whatsoever for the technical special master to have *ex parte* communications with Google without
 19 its counsel present. It is also not appropriate for the technical special master to discuss the
 20 substantive matters it discussed or learned during *ex parte* communications with Plaintiffs with the
 Court upon Plaintiffs' consent—all behind Google's back without Google's knowledge.

21 *Fourth*, the technical special master should not be allowed to issue orders, order additional
 22 discovery, or make informal rulings or reports and recommendations that would be binding on the
 23 parties without the Court's ruling, as Plaintiffs' proposal would have it. *Id.*, ¶¶ 2, 5. With respect to
 24 reports and recommendations specifically, Plaintiffs' proposed order also *prevents* the Court itself
 25 from granting extensions to file objections without good cause, an unnecessary encroachment on
 26 the Court's power. Speed should not trump transparency—the parties should be provided with a
 27 meaningful opportunity to be heard by the Court.

28 *Fifth*, only the Court, not the technical special master, should have "the authority to assess
 29 or reallocate the costs" of the proceeding. *Id.*, ¶ 7. It is unnecessary and inefficient to allow the
 30 special master to make such determinations in the interim while the Court still retains the ability to
 31 assess and reallocate the costs at the conclusion of the proceedings.

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Respectfully,

BLEICHMAR FONTI & AULD LLP

By: /s/ Lesley Weaver

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: July 2, 2021

By: /s/ Andrew Schapiro
Andrew Schapiro